IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3821 of 2003(C)

PETITIONER/ 1ST ACCUSED:

M/S.CHOLAMANDALAM INVESTMENT AND FINANCE CO.LTD., IIND FLOOR, ENSIGN ENCLAVE, JOS JUNCTION, M.G.ROAD, ERNAKULAM-682 011 REPRESENTED BY ITS LEGAL CO-ORDINATOR V.K.SAJITH.

BY ADV. SRI.PHILIP T.VARGHESE,
SRI.THOMAS T.VARGHESE.

RESPONDENTS/ STATE AND COMPLAINANT:
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1. **STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM.**

2. **K.N.UNNIKRISHNAN, S/O NARAYANA PILLAI, KALIKURUMBANTHARAYIL HOUSE, PADIVATTOM, EDAPALLY, KOCHI-682 04. (MANAGING PARTNER, U.B.C. (A TRUSTED BRAND IN TEXTILES), AYSHA COMPLEX, BANERJI ROAD, ERNAKULAM, KOCHI-682 018)**

BY PUBLIC PROSECUTOR SRI. C.K. SURESH,
ADV. SRI.K.K.RABINDRA KUMAR,
ADV. SRI.BABU KARUKAPADATH,
ADV. SMT.M.A.VAHEEDA BABU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/11/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.A. NO. 5263/2003 IN CRL.M.C. NO. 3821/2003

DISMISSED

12/11/2007. **SD/- K.R.UDAYABHANU, JUDGE.**

//TRUE COPY//

prv.

K.R. UDAYABHANU, J.

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CRL.M.C.NO. 3821 OF 2003

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DATED THIS THE 12TH NOVEMBER 2007

ORDER

The petitioner is the first accused in C.C.No.458/2003 in the file of the Judicial First Class Magistrate Court, Aluva with respect to the offences under Sections 379, 448 and 451 read with Section 34 of the Indian Penal Code. The contention is that the vehicle was taken possession as per the terms of the agreement as per which the company had financed the complainant. Annexure-2 is the copy of the complaint wherein it is alleged that the locked gate of the residential compound of the complainant was broke open and the tempo van and textiles worth Rs.88,924/- and tools worth Rs.3500/- were taken away in the night of 3-4-2003. The court below has taken cognizance of the matter. The allegations are disputed by the petitioner herein. The proceedings before the court below is sought to be quashed on the ground that no evidence is made out and that the complaint itself has been filed after 12 days of the incident. It is the case of the petitioner that repossession was effected as the monthly instalment in Ext.A1 loan transaction remained unpaid. It is submitted

that the re-possession was effected after repeated requests to clear the outstanding dues failed.

2. The counsel has relied on the decision of this Court in **Shibi Francis v. State of Kerala, 2007(3)K.L.T.923** and the decision of the Supreme Court in **ICICI Bank Ltd**. v. **Prakash Kaur, (2007)2 S.C.C.711**. The decision of this Court in **Bahuleyan v. State of Kerala, 2007 (3) K.L.J.120** also would show that the financier has no right to take physical possession of the vehicle except through the machinery of law.

3. In the instant case, I find that the allegation is that textiles worth about Rs.90,000/- was also taken away by the accused/petitioner. The above version of the complainant has not been specifically refuted. In the circumstances the finding of the fact is required . Hence, I find that it is not an apt situation to invoke Section 482 Cr.P.C. The criminal miscellaneous case is disposed of accordingly with liberty to the petitioner to approach the court below to file application for discharge, if he is entitled. The matter will stand posted before the court below on 12-12-2007.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.M.C.NO. 3821 OF 2003

ORDER

12-11-2007